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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,246	01/04/2002	Suk H. Cho	09143-018001	7295

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FISH & RICHARDSON P.C.  
3300 DAIN RASCHER PLAZA  
60 SOUTH SIXTH STREET  
MINNEAPOLIS, MN 55402

EXAMINER

FLOOD, MICHELE C

ART UNIT	PAPER NUMBER
1654	5

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>10/039,246</b>	Applicant(s) <b>Cho</b>
	Examiner <b>Michele Flood</b>	Art Unit <b>1654</b>

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on Jan 4, 2002

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

4)  Claim(s) 1-28 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims 1-28 are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_      6)  Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-21, drawn to a dietary supplement comprising an aminosaccharide, a ginger component, and an enzyme, classified in class 424, subclass 94.1 or class 424, subclass 756, for example.
  - II. Claim 22, drawn to a dietary supplement comprising (a) at least about 1500 mg of a glucosamine salt, (b) at least about 175 mg of a ginger extract, (c) at least about 125 mg of a green tea extract, and (d) at least about 50 mg of bromelain, classified in class 514, subclass 64 or class 424, subclass 729 or class 424, subclass 756 or class 424, subclass 94.65, for example.
  - III. Claim 23, drawn to a tablet comprising (a) at least about 500 mg of glucosamine hydrochloride, (b) at least about 60 mg of a ginger extract, (c) at least about 20 mg of a green tea extract, and (d) at least about 20 mg of bromelain, classified in class 424, subclass 464, for example.
  - IV. Claims 24-28, drawn to a method for reducing pain, inflammation, stiffness, or discomfort in a mammal, said method comprising administering a dietary supplement to said mammal in an amount effective to reduce said pain, inflammation, stiffness, or discomfort, wherein said dietary supplement comprises

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an aminosaccharide, a ginger component, and an enzyme, classified in class 514, subclass 914, for example.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I-III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the three different groups are directed to three different products. For instance, the invention of Group I differs from the invention of Groups II and III because the invention of Group I is directed to a dietary supplement comprising an aminosaccharide, a ginger component, and an enzyme, whereas the invention of Group II is directed to a dietary supplement comprising a glucosamine salt, a ginger extract, a green tea extract, and bromelain, and whereas the invention of Group III is directed to a tablet comprising glucosamine hydrochloride, a ginger extract, a green tea extract, and bromelain. Different products comprising different ingredients are expected to have different functional effects. These products are capable of separate manufacture, use or sale, as claimed, and are patentable (novel and unobvious) over each other (though they may be unpatentable because of the prior art subjects).

The several inventions above are independent and distinct, each from the other. They have acquired a separate status in the art as a separate subject for inventive effect and require independent searches (as indicated by the different classification). The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further a

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reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group. Finally, the consideration for patentability is different in each case. Thus, it would be an undue burden to examine all of the above inventions in one application.

3. Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another materially different product. For example, in U.S. Patent No. 3758682, Huber teaches a method for reducing pain, inflammation, stiffness, or discomfort in a mammal comprising the administration of orgotein to the mammal.

4. Because these inventions are distinct for the reasons given above and the search required for one Group is not required for another Group, restriction for examination purposes as indicated is proper.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is (703) 308-9432. The examiner can normally be reached on Monday through Friday from 7:15 am to 3:45 pm. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196 or the Supervisory Patent Examiner, Brenda Brumback whose telephone number is (703) 306-3220.

*Michele C. Flood.*

MCF

December 2, 2002